PETROLIAM NASIONAL BHD

v.

NIK RAMLI NIK HASSAN

FEDERAL COURT, KUALA LUMPUR
STEVE SHIM CJ (SABAH & SARAWAK)
MOHTAR ABDULLAH FCJ
MOKHTAR SIDIN JCA
[CIVIL APPEAL NO: 02-01-2001(W)]
10 OCTOBER 2003

ADMINISTRATIVE LAW: *Judicial review - Jurisdiction and powers - Whether decision of inferior tribunal may be reviewed on the merits - Principles and application of powers of judicial review under R Rama Chandran v. Industrial Court Of Malaysia & Anor - Whether every decision of every statutory tribunal amenable to Rama Chandran approach - Whether reviewing award of Industrial Court on the merits akin to exercising appellate powers - Whether 'judicial excessivism' or 'controlled judicial activism' - Rules of the High Court 1980, O. 53*

LABOUR LAW: *Industrial Court - Decision - Propriety of - Whether Industrial Court properly appreciated facts and law - Whether evidence properly reviewed - Whether proper inferences drawn from conduct of parties - Whether decision-making process tainted with procedural impropriety - Whether findings of fact grounded on illegality or plain irrationality - Whether decision itself reasonable - Whether finding that employee was not constructively dismissed was flawed - Judicial review of decision of Industrial Court*

The respondent/employee had earlier brought a claim for constructive dismissal against the appellant/employer. The Industrial Court, however, found that there was no breach of the contract of service on the part of the employer and, thus, dismissed the employee's claim ('the said award'). The High Court disagreed, holding that the Industrial Court had, in coming to its conclusion, committed an error of law and, thus, issued *certiorari* to quash the said award.

The instant appeal by the employer was from the decision/orders of the Court of Appeal: (i) upholding the decision of the High Court in quashing the said award; (ii) entering a finding that the employee was dismissed without just cause or excuse; and (iii) remitting the case to the Industrial Court for an assessment of the quantum of compensation.

The question of law that arose for decision before the Federal Court was: whether the jurisdiction of the courts to conduct judicial review under O. 53 of the Rules of the High Court 1980 ('RHC') encompasses the right to decide on the correctness of the decision on the merits.

Held (answering question of law in affirmative but allowing appeal):
Per Steve Shim CJ (Sabah & Sarawak)

[1a] The Federal Court has dealt exhaustively with the supervisory powers of the courts in proceedings for judicial review in the case of *R Rama Chandran v. Industrial Court Of Malaysia & Anor* [1997] 1 CLJ 147 FC. The 'progressive' views of the majority decision in that landmark case has also been adopted, followed and reaffirmed by both the Federal Court and the Court of Appeal in their subsequent decisions. Hence, the said decision would not be revisited in the instant appeal. (pp 633 c-h, 634 a-h, 635 a-h & 636 a-e)

[1b] It would be inaccurate to describe the decision in *R Rama Chandran v. Industrial Court Of Malaysia & Anor* as 'judicial excessivism'. Rather, it is the kind of 'controlled judicial activism' that is required in order to meet, in a supervisory context, the ever-widening powers being conferred upon statutory tribunals and bodies. (pp 633 c-h, 634 a-h, 635 a-h & 636 a-e)

[1c] The *ratio decidendi* in *R Rama Chandran v. Industrial Court Of Malaysia & Anor* applies not only in respect of the decisions of the Industrial Court but also to those of the other statutory tribunals and bodies. Thus in proceedings for judicial review the courts will have the jurisdiction and the power to: (i) review the decision of the tribunal on the merits; (ii) substitute the decision of the tribunal with one of its own without remitting the matter to the tribunal for re-adjudication; and (iii) order consequential relief. These powers, however, should only be invoked in the most appropriate of cases as not every case is amenable to the *Rama Chandran* approach. It must be remembered that the review of an award of the Industrial Court on the merits is akin to (though not the same as) the exercise of appellate powers. (pp 633 c-h, 634 a-h, 635 a-h & 636 a-e)

[2] In the present case, there were no substantial flaws in the reasoning and conclusion of the Industrial Court in respect of the said award. On the contrary, the said award contained a sound analysis of the law on constructive dismissal. Having conducted a detailed examination of all the facts and the oral and documentary evidence, and having drawn the

proper inferences from the conduct of the parties involved, the Industrial Court came to the conclusion that the employer had neither breached the contract of service nor evinced an intention not to be bound by it. The Industrial Court had made a finding that the employee was impatient and was impulsive in walking out on his job. The reviewing judge might not have come to the same conclusion based on the same facts but he should have exercised restraint; he ought not to have disturbed those findings unless they were grounded on illegality or plain irrationality, which they were not. The Industrial Court had properly appreciated the facts and the law and its decision-making process was not tainted with procedural impropriety; the decision itself was also reasonable. (pp 636 f-h, 637 a-h & 638 a-c)

[Question of law answered in the affirmative. Employer's appeal allowed however; decisions of Court of Appeal and High Court set aside; award of Industrial Court reinstated.]

*[**Bahasa Malaysia** Translation Of Headnotes*

Responden/pekerja sebelum ini telah membuat tuntutan terhadap perayu/majikan kerana pembuangan kerja konstruktif. Mahkamah Perusahaan, bagaimanapun, mendapati tidak berlaku apa-apa pelanggaran kontrak perkhidmatan di pihak majikan dan, dengan itu, menolak tuntutan pekerja ('award tersebut'). Mahkamah Tinggi tidak bersetuju, dan dengan alasan bahawa Mahkamah Perusahaan telah melakukan kesilapan undang-undang dalam mencapai keputusannya telah mengeluarkan certiorari bagi mengetepikan award tersebut.

Rayuan semasa oleh majikan adalah terhadap keputusan/perintah Mahkamah Rayuan kerana: (i) mengekalkan keputusan Mahkamah Tinggi yang mengetepikan award tersebut; (ii) mendapati bahawa pekerja telah dibuang kerja tanpa sebab dan alasan yang adil; dan (iii) mengembalikan kes ke Mahkamah Perusahaan untuk penilaian kuantum gantirugi.

Soalan undang-undang yang berbangkit untuk keputusan Mahkamah Persekutuan adalah: sama ada bidangkuasa mahkamah-mahkamah untuk menjalankan kajian semula kehakiman di bawah A. 53 Kaedah-Kaedah Mahkamah Tinggi 1980 ('KMT') merangkumi hak untuk menentukan kebetulan keputusan berdasarkan merit.

Diputuskan (menjawab soalan undang-undang secara afirmatif tetapi membenarkan rayuan):
Oleh Steve Shim HB (Sabah & Sarawak)

[1a] Persoalan mengenai kuasa semakan mahkamah-mahkamah dalam prosiding kajian semula kehakiman telah dikupas dengan amat terperinci oleh Mahkamah Persekutuan dalam kes *R Rama Chandran lwn. Industrial Court of Malaysia & Anor* [1997] 1 CLJ 147 FC. Pandangan 'progresif' keputusan majoriti dalam kes mercutanda itu telah juga diterimapakai, diikuti dan disahkan oleh kedua-dua Mahkamah Rayuan dan Mahkamah Persekutuan dalam keputusan-keputusan mereka yang terkemudian. Dengan yang demikian keputusan tersebut tidak perlu lagi disentuh dalam rayuan semasa.

[1b] Adalah tidak tepat untuk menyifatkan keputusan dalam *R Rama Chandran lwn. Industrial Court of Malaysia & Anor* sebagai satu 'judicial excessivism'. Keputusan tersebut, sebaliknya, adalah satu 'controlled judicial activism' yang diperlukan bagi memenuhi, dalam konteks penyemakan, kuasa-kuasa yang sentiasa mengembang yang diberikan kepada badan-badan dan tribunal-tribunal statutori.

[1c] *Ratio decidendi* dalam *R Rama Chandran lwn. Industrial Court of Malaysia & Anor* terpakai bukan sahaja terhadap keputusan-keputusan Mahkamah Perusahaan tetapi juga terhadap keputusan-keputusan tribunal-tribunal dan badan-badan statutori lain. Oleh itu, dalam prosiding kajian semula kehakiman mahkamah-mahkamah mempunyai bidangkuasa serta kuasa untuk: (i) mengkaji semula keputusan tribunal di atas merit; (ii) mengganti keputusan tribunal dengan keputusannya sendiri tanpa mengembalikan halperkara kepada tribunal untuk penilaian semula; dan (iii) memerintah relif-relif susulan. Kuasa-kuasa ini, bagaimanapun, hendaklah hanya digunakan dalam kes-kes yang wajar sahaja, kerana bukan semua kes sesuai dengan pendekatan *R Rama Chandran.* Harus juga diingat bahawa kajian semula sesuatu award Mahkamah Perusahaan di atas merit adalah seperti melaksanakan kuasa-kuasa rayuan (walaupun tidak menyamainya).

[2] Dalam kes semasa, tidak terdapat apa-apa kecacatan substantial pada alasan dan rumusan Mahkamah Perusahaan berkaitan award tersebut. Award tersebut, sebaliknya, mengandungi analisa mantap tentang undang-undang pembuangan kerja konstruktif. Setelah mempertimbang dengan sehalus-halusnya fakta-fakta serta keterangan-keterangan oral dan dokumentar, dan setelah membuat inferens-inferens wajar terhadap tingkah laku pihak-pihak terlibat, Mahkamah Perusahaan telah merumuskan

bahawa majikan bukan sahaja tidak melanggari kontrak perkhidmatan tetapi juga tidak menunjukkan sebarang ketidakinginan untuk tidak terikat dengannya. Mahkamah Perusahaan juga membuat dapatan bahawa pekerja tidak sabar dan bersikap terburu-buru apabila meninggalkan pekerjaannya. Hakim yang mengkaji semula tidak semestinya akan mencapai rumusan yang sama berdasarkan fakta-fakta yang serupa, namun, beliau seharusnyalah berhati-hati; beliau tidak harus mengganggu rumusan dan keputusan berkenaan kecualilah jika ianya didasarkan atas suatu ketidaksahan atau ketidakmunasabahan yang ketara, yang mana rumusan-rumusan di sini bukanlah bersifat begitu. Mahkamah Perusahaan telah mempertimbang fakta-fakta dan undang-undang dengan sewajarnya, dan proses pencapaian keputusannya tidak dicemari oleh apa-apa ketidakteraturan prosedur; keputusannya juga adalah munasabah.

Soalan undang-undang dijawab secara afirmatif. Rayuan majikan bagaimanapun dibenarkan; keputusan-keputusan Mahkamah Rayuan dan Mahkamah Tinggi diketepikan; award Mahkamah Perusahaan dipulihkan.]

Case(s) referred to:

Amanah Butler (M) Sdn Bhd v. Yike Chee Wah [1997] 2 CLJ 79 CA ***(refd)***

Datuk Bandar Kuala Lumpur v. Zain Azahari Zainal Abidin [1997] 2 CLJ 248 CA ***(refd)***

Kumpulan Perangsang Sdn Bhd v. Zaid Mohd Noh [1997] 2 CLJ 11 FC ***(refd)***

R Rama Chandran v. The Industrial Court of Malaysia [1997] 1 CLJ 147 FC ***(foll)***

Swedish Motor Association Sdn Bhd v. Hj Mohd Ison Baba [1998] 3 CLJ 288 CA ***(refd)***

Western Excavating (EEC) Ltd v. Sharp [1978] 2 WLR 344 ***(refd)***

Wong Chee Hong v. Cathay Organisation (M) Sdn Bhd [1988] 1 CLJ 45; [1988] 1 CLJ (Rep) 298 SC ***(refd)***

Legislation referred to:

Courts of Judicature Act 1964, s. 78

Industrial Relations Act 1967, ss. 20(1), (3), 30(4), (5)

Other source(s) referred to:

Choo Chin Thye, *The Role of Article 8 of the Federal Constitution in the Judicial Review of Public Law in Malaysia*

Dr Venkatiyer, *The Importance of Judicial Review, Insaf,* vol xxxi, no 4, p 60

Sudha CKG Pillay, *The Ruling in Rama Chandran – A Quantum Leap in Administrative Law,* [1998] 3 MLJ lxii

For the appellant/employer - Dr Cyrus Das (S Nanthabalan, Steven Thiru & Jack Yow); M/s Shook Lin & Bok

For the respondent/employee - B Lobo (LC Seah); M/s Lobo & Assoc

Reported by Gan Peng Chiang

JUDGMENT

Steve Shim CJ (Sabah & Sarawak):

Before I proceed to read the judgment, let me say that on 7 August 2002, the late Mohtar Abdullah FCJ was due to deliver the judgment on this case but unfortunately, the day before, he was suddenly struck down with a stroke. It was then found necessary to await his recovery so that he could proceed to deliver the judgment. Sadly, he passed away. Hence the delay in the delivery of this judgment. It is therefore done pursuant to s. 78 of the Courts of Judicature Act 1964.

On 3 January 2000, the appellant was granted leave to appeal to the Federal Court on the following question:

> Whether the review jurisdiction of the review court under Order 53 of the Rules of High Court, 1980, includes a right of the review court to decide for itself the correctness of the decision on the merits.

The factual background can be briefly stated. The respondent obtained his masters' degree in geology in 1977. He commenced work with the appellant on 16 December 1977 as a Trainee Geologist. He was later confirmed as a Geologist on 16 December 1978. Between 1979 and 1983 he served in various positions, finally as Section Head of Geological Projects which was a grade 5 post. In 1983, he was offered a scholarship to do his Ph.D at Oxford University, United Kingdom. Upon completion of this course in September 1986, the respondent returned to Malaysia and resumed work with the appellant and was emplaced in the Laboratory Services Department. On reporting to the Manager of Laboratory Services Department, the respondent claimed that he was not given any position or job description. As he was unhappy with this state of affairs, he made inquiries with his superior officers. By a letter dated 23 September 1986, the Manager of Laboratory Services Department Dr. Ramlee' Karim conveyed to him the following information:

1. With the present set-up of the Laboratory Services Department there is no position which suits your academic qualifications and working experience.

2. With the formation of PRI there could possibly be a suitable slot for you.

3. In the interim period before the establishment of the PRI you are to report direct to the Laboratory Services Department manager with a function of assisting him to set up the upstream aspect of PRI and to generally assist in upstream matters.

PRI refers to the Petronas Research Institute. After the formation of PRI in mid-1987, the respondent was informed by the General Manager, Human Resources Division that his position in PRI was to be a Geologist. The respondent considered this to be a demotion in rank as it was the same position he held in 1978 from which position he had on severar occasions been promoted. So on 30 November 1988 he wrote a letter of complaint to the Director of PRI seeking a transfer to another appropriate job taking into consideration his qualifications and experience with a copy to the Vice-President, Human Resources and Manpower Division. There was no response from them. On 12 December 1988, the respondent sent a reminder to the director of PRI, again copied to the Vice-President. The reminder was short and terse:

> Request for Transfer –
>
> Dr. Nik Ramli Nik Hassan
>
> With reference to my memo dated 30th November 1988 on the above, I would appreciate if action on the memo could be carried out on or before the 16th of December 1988 following which I may have to consider other options.

This reminder sounded more like an ultimatum. Possibly because of this, it fell on deaf ears. The respondent was however persistent. On 20 December 1988, he wrote a final letter to the same director copied to the same Vice-President in the following terms:

> I refer to my letter of 12th December 1988 on the question of employment with the Company to which I have yet to get a reply. I have been patient for almost two years while I was under 'cold storage'.
>
> It has now become clear to me that the Company has evinced an intention not to be bound by the terms of my employment contract and the scholarship agreement dated 8th October 1983.
>
> Under the circumstances, I have no alternative but to consider myself dismissed with effect from 20th December 1988.

Thereafter, the respondent did not turn up for work. On 23 December 1988, he received a letter from the General Manager, Human Resources Division asking him to report back for duty. The respondent did not do so as he considered himself dismissed. He then lodged a complaint with the Director General of Industrial Relations under s. 20(1) of the Industrial Relations Act 1967 (the Act). Subsequently, the Minister of Human Resources referred the dispute to the Industrial Court under s. 20(3) of the Act. The main focus of the respondent's complaint in the Industrial Court was "constructive dismissal". He felt he had been demoted as the appellant had kept him (to use his words)

"in cold storage" since his return from Oxford University. He further contended that up to December 1988, he was put in (again in his words) "a nothing to do position". After a lengthy hearing, the Industrial Court dismissed the respondent's claim for unfair dismissal. It is sufficient to refer to that part of the award which reads:

> Having heard the oral evidence and seen the documentary exhibits produced by both parties before this court, I am of the finding that the Claimant had not, on the balance of probability, proved to the court that he was cold storaged or was in a nothing to do position. Neither was he demoted. In fact, oral as well as documentary evidence are overwhelmingly against the contention of the Claimant. As such, I am of the view that the Company is not guilty of a breach which goes to the root of the service contract or it has evinced an intention no longer to be bound by it.

Dissatisfied, the respondent moved the High Court for orders of *certiorari* and mandamus. The High Court held that the Industrial Court had committed an error of law in arriving at its conclusion and accordingly granted the orders prayed for. Against this decision, the appellant appealed to the Court of Appeal. In the Court of Appeal, counsel for the appellant contended that the High Court had exceeded its jurisdiction in usurping the functions of an appellate court. In rebuttal, counsel for the respondent argued that the High Court was right in granting *certiorari* because the Industrial Court had failed to conduct a proper analysis of the facts and as such it had arrived at an erroneous conclusion. He further submitted that no reasonable tribunal, similarly circumstanced, would have arrived at such a conclusion. In delivering the judgment of the Court of Appeal Gopal Sri Ram JCA said *inter alia*:

> Now, having read the record and having considered the submissions of both counsels carefully, we agree with the submission advanced on behalf of the Respondent. This is a case where it is clear that the Industrial Court took a narrow and pedantic approach to the facts before it. This is not a case of breach of contract at common law. This is a case which, according to the terms of the Industrial Relations Act, 1967, has to be decided in accordance with good conscience and equity ...
>
> Having regard to the factual matrix, in particular, the treatment that the Respondent received at the hands of the Appellant's officers, there is little or no doubt in our mind that a reasonable tribunal properly directing itself on the facts and law would have reached a conclusion that the Respondent had been dismissed without just cause or excuse. This is indeed the conclusion of the learned Judge. We are fully in agreement with him. Having read his judgment, we are unable to discover any misdirection either in law or in his appreciation of the facts. We are therefore of the view that this appeal should be dismissed ...

The Court of Appeal however varied the order of the High Court as follows:

(i) *certiorari* is to issue and quash the award of the Industrial Court;

(ii) there shall be a finding that the respondent was dismissed without just cause or excuse;

(iii) the order of mandamus is set aside;

(iv) the case shall be remitted to the Industrial Court to assess the quantum of compensation only;

(v) the remedy of reinstatement is refused.

It is immediately clear, upon perusal of the judgments of the High Court and the Court of Appeal, that they had conducted a review of the correctness of the decision of the Industrial Court on the merits. Now, the Federal Court in *R. Rama Chandran v. The Industrial Court of Malaysia* [1997] 1 CLJ 147 has taken a bold step in the area of administrative jurisprudence. It has, to some extent, unshackled the Malaysian Judiciary from the traditional constraints of judicial review which have plagued the courts in the United Kingdom and other Commonwealth countries. The Federal Court, in a majority decision, has held, *inter alia*, that in judicial review proceedings, the courts have the following powers:

(a) to review the decision of a tribunal on the merits;

(b) to substitute a different decision in place of the tribunal's decision without remitting in to the tribunal for re-adjudication; and

(c) to order consequential relief.

Dato' Dr. Cyrus Das has requested us to revisit *Rama Chandran*. He has presented us with some powerful arguments. It has been an able and thorough presentation. He argues that *Rama Chandran* could have been wrongly decided; that it has obliterated the traditional distinction between supervisory and appellate jurisdiction of the High Court. He further contends that it has all but rendered the ouster clause in s. 33B of the Industrial Relations Act, a dead letter, those issues had been dealt with in *Rama Chandran*. In my view, the Federal Court in *Rama Chandran* had discussed exhaustively the supervisory powers of judicial review in Malaysia. The discussions were wide ranging. There were conflicting views. But the majority views prevailed. Still, it is, I think, important to register a cautionary note. Here, I would endorse the observation made by Mr. Choo Chin Thye in his article entitled *"The Role of Article 8 of the Federal Constitution in the Judicial Review of Public Law in Malaysia"* when he said:

> It should also be noted that the Federal Court in *Rama Chandran* emphasized very carefully that the power of the court to examine the merits or substance of a decision of a public decision maker is an exceptional circumstance that will arise only where the factual matrix of a case required it. Otherwise, the general rule that the court will not inquire into the merits before a public decision maker still holds.

The majority pronouncements in *Rama Chandran* had been reaffirmed by the Federal Court in *Kumpulan Perangsang Sdn Bhd v. Zaid Mohd Noh* [1997] 2 CLJ 11 and followed by the Court of Appeal in several cases ie, *Amanah Butler (M) Sdn Bhd v. Yike Chee Wah* [1997] 2 CLJ 79; *Datuk Bandar Kuala Lumpur v. Zain Azahari bin Zainal Abidin* [1997] 2 CLJ 248 and *Swedish Motor Association Sdn. Bhd v. Haji Mohd Ison bin Baba* [1998] 3 CLJ 288. In the circumstances, I do not propose to discuss these issues again in this judgment. Suffice to say that the progressive views expressed in. *Rama Chandran* have been accepted and adopted by the Malaysian Judiciary at the highest level. Although those views are expressed in the context of decisions from Industrial Courts, they are also applicable, in my view, to decisions of other statutory tribunals or bodies. Here, I am reminded by what Lord Browne-Wilkinson had said that judicial review had become one of the most socially important and legally fertile areas of the law and he went on to make the following observation in his *"Foreword to Supperstone & Goudie, Judicial Review, London, Buiterworths, 1992"*:

> Its social importance is self-evident. Growth in executive interference in the lives of individuals, inevitable in a modern state, has exposed us all to the risk that executive power may be exercised in an unbridled or abusive manner. If, as some thought, the common law has proved so senile and impotent that it could not develop to meet this change in society, the rule of law would not have regulated administrative action. Governments are not notorious for introducing legislation which limits their own powers. Happily, the common law has proved to be fertile not impotent.

Quite clearly, the views expressed by the majority in *Rama Chandran* are not the product of what some legal commentators described as "judicial excessivism". On the contrary, they reflect the kind of controlled judicial activism that is needed in order to meet, in a supervisory context, the ever-widening powers conferred upon statutory tribunals or other bodies which have proliferated, in modern times and affecting, quite conceivably, all facets of society. I say "controlled" because I take the view that *Rama Chandran* powers should only be invoked in appropriate cases. Otherwise, there is the danger of inculcating what a learned writer has aptly described as a "runaway development

of judicial review". (see Dr. Venkatiyer: *The Importance of Judicial Review, Insaf,* vol. xxxi no. 4, p. 60. In drawing attention to the Indian experience, he says this:

> India stands out as a prime example of this unfortunate development. There, the courts, have assumed competence over an amazing array of public activity: they have given directions as to the width of a road giving access to a building. (*Upendra Baxi v. State of Uttar Pradesh* [1986] 4 SCC 106); asked a State to pass legislation to prevent ragging of college students, (*State of Himachal Pradesh v. A Parent of a Student of Medical College, Simla* [1985] 3 SCC); revoked the limit that had been put on the expenditure on drugs in a mental hospital, (*Rakesh Chand Narain v. State of Bihar* [1986] Supp. 576); laid down guidelines for inter-country adoption of children, (*Laxmi Kant Panday v. Union of India* AIR [1987] SC 232); prescribed the qualifications for drivers of buses belonging to or hired by educational institutions, (*MC Mehta v. Union of India* [1998] IX AD (SC) 37); and so on.

According to him, the Indian practice has been the subject of criticism because the courts would have encroached upon the sphere allotted to the legislature by making populist declarations of rights – rights which Parliament, in its wisdom, chose not to legislate upon.

Clearly therefore, not every case is amenable to the *Rama Chandran* approach. It depends on the factual matrix and/or the legal modalities of the case. This is certainly a matter of judicial discretion on the part of the reviewing judge. In the instant case, notwithstanding the very able submission by Dato' Dr. Cyrus Das, I remain unconvinced that a case has been made out for revisiting *Rama Chandran* in terms of his propositions. That being the case, the answer to the question postulated for our consideration has to be in the affirmative.

Be that as it is, it does not, however, automatically follow that this appeal has to be dismissed. There is still the question of whether the High Court had properly examined and appreciated the facts presented in the Industrial Court. Could it be said, as the Court of Appeal had held, that no reasonable tribunal, similarly circumstanced, would have arrived at the decision which the Industrial Court had? At this point, I find the following observation expressed by Sudha C.K.G. Pillay in her article "*The Ruling in Rama Chandran – A Quantum Leap in Administrative Law* [1998] 3 MLJ lxii" to be particularly apt. She said this:

> The new powers that have been entrusted to the courts are enormous and like any other powers are open to abuse. Thus, it is vital for the reviewing courts to display caution and circumspection in the exercise of these wider powers. To this end, the courts should not be quick to wield their new powers in each and every case that comes before it. It has to weigh a multitude of factors

> before coming to a decision to exercise such powers. In so far as the review of Industrial Court awards are concerned, the reviewing courts must balance not only the competing interest of both the employee and the employer but also the need to preserve the functions of the Industrial Court and to prevent the remedy of s. 33A from fading into oblivion and becoming obsolete. If the ruling in *Rama Chandran* is taken to authorize the exercise of the wider powers of the courts in each and every case where the award of the Industrial Court is challenged, the spirit in which these new powers was conferred by the majority in *Rama Chandran* will have been misunderstood and, perhaps, inadvertently, pave the way for an unnecessary emasculation of the functions of the Industrial Court.

The fear of unnecessarily emasculating the functions of the Industrial Court can be laid to rest if the reviewing courts, in the exercise of their powers,. constantly bear in mind that the review of the Industrial Court's award on the merits is akin to, though not the same as, the exercise of appellate powers. The courts should also remind themselves that the Industrial Court operates under the Industrial Relations Act 1967, in accordance with principles quite different from those in the civil courts. For example, s. 30(4) and (5) of the Act stipulates:

> (4) In making its award in respect of trade dispute, the court shall have regard to the public interest, the financial implications and the effect of the award on the economy of the country, and on the industry concerned, and also to the probable effect in related or similar industries;
>
> (5) The court shall act according to equity, good conscience and the substantial merits of the case without regard to the technicalities and legal form.

In the instant case, on a careful perusal of the award given by the Industrial Court, I am unable to detect any substantial flaws in its reasoning or the conclusions therein. In my view, the award contains a sound analysis of the law as to what constitutes constructive dismissal by an employer in line with the propositions postulated by Lord Denning MR in *Western Excavating (EEC) Ltd v. Sharp* [1978] 2 WLR 344 and by Tun Salleh Abbas LP in *Wong Chee Hong v. Cathay Organisation (M) Sdn Bhd* [1988] 1 CLJ 45; [1988] 1 CLJ (Rep) 298. The Industrial Court had conducted a detailed review of all facts and evidence, both oral and documentary, presented by the disputing parties. It had drawn inferences from the conduct of the respondent and the relevant officers of the appellant. It then came to the conclusion that the appellant was not guilty of any breach which went to the root of the service contract nor had it evinced an intention not to be bound by it. It further held that there was no breach which could justify the respondent's resignation. In coming to

these conclusions, it also took into consideration the unhappy if not unfortunate professional relationship between the respondent and certain principal officers of the appellant. This is reflected in that part of the award which states:

> However, I do not think that the Claimant's allegations of constructive dismissal is a convenient device for him to escape so as to venture out on his own. I believe Claimant loved to remain in Petronas (the Company), but because of his belief that he was not given a position commensurate with his qualifications and experience and being unable to get along wonderfully with Dr. Ramlee Karim and Professor Dr. Olav Christie and that his application for transfer had not received a favourable response from the Human Resources Management Department had made him to act impulsively and walked out of his job. He was just impatient.

Quite clearly, the Industrial Court had found the respondent to be impatient. A reviewing judge might not have come to the same conclusion from the established facts but he should exercise restraint. He should not disturb such finding unless it could be shown to be based on grounds of illegality or plainly irrational. In this case, the Court of Appeal had made the following observation:

> Having regard to the factual matrix, in particular, the treatment that the respondent received at the hands of the appellant's officers, there is little doubt that a reasonable tribunal, properly directing itself on the facts and the law would have reached a conclusion that the respondent had been dismissed without just cause or excuse. This is indeed the conclusion of the learned judge. We are fully in agreement with him.

With respect, I am unable to agree with that observation. In my view, there is no illegality in the finding of the Industrial Court, nor can it be said to be plainly irrational in all the circumstances. On the contrary, a closer perusal of the award shows that there has been a proper appreciation of the facts and law by the Industrial Court. It has also taken into account the competing interests of the workman and his employer. I am therefore unable to accept the observation made by the High Court in these terms:

> From the facts of this case, I do not think that the Applicant had acted impatiently. On this issue, I cannot agree with the view of the Industrial Court in stating that 'He was just impatient'. As stated in the Award the Applicant returned to report to Petronas around September 1986 and only left Petronas in December 1988, a period of more than 2 years. How long can a person of his qualification and experience be asked to wait before given a proper job? From these facts it is more appropriate to conclude that after waiting more than two years, the Applicant had been more than patient ...

It is said that patience is a virtue. It is relative. A two year wait may be too long for the respondent. It may not be for others. It depends on the particular circumstances. In government service or in a very large organization such as Petronas, a holder of a Ph. D does not necessarily guarantee a promotion. There are numerous imponderables involved. A long wait for promotion is not an uncommon feature in government service or statutory bodies. It is common knowledge that bureaucratic niceties come into play in such organizations. In the premises, having regard to the established facts and for the reasons stated, I take the view that the conclusion or finding arrived at by the Industrial Court that the respondent had not been dismissed without just cause or excuse to be reasonable in all the circumstances. It had acted in accordance with the relevant principles prescribed by law. There was no procedural impropriety involved in the decision making process nor could it be said that its finding or conclusion was based on grounds of illegality or irrationality.

That being the position, I would therefore allow the appeal with cost. The decisions of both the Court of Appeal and the High Court are hereby set aside. The award of the Industrial Court is reinstated. Orders accordingly.